IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL WRIT PETITION NO.9778/07
Jagdish Prasad & Ors. Vs. Kailash & Anr.

Date of order : 28/11/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Shailesh Prakash Sharma for the petitioner.

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The petitioner has challenged the order dated 31.10.2007 whereby his appeal against the order dated 30.5.2007 passed by the Civil Judge (Junior Division), Kotputli has been dismissed. The Civil Judge by the aforesaid order has rejected the injunction application of the petitioner holding that there was no prima facie case in favour of the petitioner and that the latrine was allowed to be dugged by Municipal

Board. The learned Court directed that the latrine shall be covered by cement in such a way that it will not cause any hindrance to the thoroughfare. The learned Additional District Collector while rejecting the appeal of the petitioner also reiterated the same finding. It was held that there is not much traffic and in fact the land of the west of the chabutra till shop was not used as part of the thoroughfare and was merely used for parking of the jeeps, scooters etc.

Learned counsel for the petitioner in assailing the aforesaid two orders has argued that both the courts have failed to correctly appreciate the material evidence on record. It was argued that granting of permission of digging latrine on the public way was

wholly unreasonable and unjustified. The digging of the latrine at public way and chowk should not be permitted because this land was a public land and was not the last of the respondents. It would be hazardous when heavy vehicles pass through that road. Learned counsel also produced photograph and asserted that another alternative toilet has been constructed by the respondents and therefore also the balance of convenience should be taken in favour of the plaintiff petitioner.

Having heard the learned counsel for the petitioner, I find that both the courts have concurrently held against the plaintiff-petitioner on the question of not only prima facie case but also balance of convenience and irreparable loss.

In the facts of the case, therefore, I do not find that the orders passed by the courts below suffer from any material irregularity as may warrant interference by this Court.

The writ petition is accordingly dismissed.

(MOHAMMAD RAFIQ), J.

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